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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/574,874

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Ian David Kaehne

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EXAMINER

BADR, HAMID R

ART UNIT

PAPER NUMBER

1794

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02/05/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/574,874	Applicant(s) KAEHNE, IAN DAVID	
	Examiner HAMID R. BADR	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/11/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Objection to Claims

Claims 1-35 are objected to for incorporating chemicals some of which are known to be toxic to human beings and animals. Safety measures are required to make sure such chemicals, regarding the type and concentrations, are safe when incorporated into a beverage for human consumption.

Claims 4-8 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

With respect to claim 4, the amount of phosphorous of "at least 36 mg/L" is broader than that of claim 1 of "from 3.0 to 360 mg/L" given that at least 36 mg/L includes amounts greater than 360 mg/L. Similar objections are made with respect to each of claims 5-8 which each recite broader amounts of phosphorous than that disclosed in the claim on which they each depend, namely, claim 1.

Claim 20 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 21 discloses a pH broader than claim 20.

Claims 27-28 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is

Art Unit: 1794

required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claims 27-28 are objected to for failing to further limit claim 2 with respect to the amount of dilution.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 10-18, 24 and 33-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 10-18 are indefinite because the scope of the claim is confusing since no units are given for the amounts of elements.
4. Claim 12 is indefinite for "most preferable". It is unclear what is meant by most preferable. It is not clear what the applicant regards as the invention.
5. Claim 16 is indefinite for "most preferred". It is unclear what is meant by most preferred. It is not clear what the applicant regards as the invention.
6. Claim 24 is indefinite for "acceptable" organic or mineral acid given that it is not clear what is meant by "acceptable" or what types of acids would be considered acceptable.
7. Claims 33-34 recite the limitation "the manufactured mineral water" in claim 1. There is insufficient antecedent basis for this limitation in the claim.

8.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donhowe (US 2003/0157218; hereinafter R1) in view of Costa (WO 01/68534; hereinafter R2) and Lindon et al. (US 5,786,006; hereinafter R3)

11. R1 discloses a process for the preparation of a sport beer or malt beverage that has enhanced nutrition in comparison to the existing beer or malt beverage. The beverage comprises a beer or malt beverage that contains supplements such as minerals, vitamins, anti-oxidants, proteins etc. (Abstract).

12. R1 discloses the process for the production of the sport beer as consisting of a brewing process wherein barley malt grain is milled, mixed with hot water, and carbohydrates are saccharified and fermented using yeast. After the fermentation by yeast, the yeast is separated and lagering or the maturation of the beer is carried out. The beer is transferred to a finishing tank where supplements such as calcium, zinc and/or iron are added. The supplements such as minerals or proteins or antioxidants are dissolved in water prior to the addition to the beer. [0017].

13. Given that the minerals or other supplements are dissolved in water before adding to the beer, it is clear that the beer will be diluted as presently claimed.

Art Unit: 1794

14. Given that the supplements are dissolved in water, it is clear that any dilution of the beer can be effectuated by those of skill in the art. The presently claimed dilution of 0.5% to 90% of the original strength of the beer is obvious. Additionally R1 claims a beverage having 0.45%-10% alcohol (R1 Claim 2). It is obvious that such a beer can represent the dilutions as presently claimed.

15. Given that R1 discloses the process for making the original beer, it is obvious that any kind of beer such as stout beer, pilsner beer, light beer, extra light beer, medium strength beer etc. can be formulated with the minerals and other supplements.

16. The pH range of 3.5-5.0 is intrinsic to all beers. It is obvious that the pH of the diluted beer will be adjusted to preserving the taste of the beer and also for the preservation of the beer. The variability of pH in different beer types is also known to the people of skill in the art.

17. While R1 clearly is motivating for the supplementation of beer or malt beverages, it is silent regarding the groups of minerals as presently claimed.

18. R2 discloses additives for drinks and potable water. (Title and Abstract)

19. R2 discloses that the additive which could be solids, liquids etc can be dissolved into drinks including beers and wines (page 2, Definition).

20. R2 discloses the mineral additives to include calcium 0-300 mg, Chlorine 0-60 mg, fluor 0-4 mg, chromium 0-50 microgram, iron 0-40 mg, phosphorus 0-300 mg, iodine 0-300 microgram, magnesium 0-200 mg, manganese 0-5 mg, potassium 0-80 mg, selenium 0-50 microgram, sodium 0-150 mg, zinc 0-30 mg, copper 0-4 mg, gold 0-20 microgram, silver 0-20 microgram, tin 0-20 microgram, molybdenum 0-50

Art Unit: 1794

microgram, nickel 0-10 microgram, silicium 0-20 microgram, vanadium 0-20 microgram. (pages 13-15). The amounts are based on the daily human consumption. Therefore, a serving size can be designed to supply for instance 150 mg of calcium for a daily consumption.

21. Given the spectrum of minerals disclosed by R2 as well as the amounts and given that it is well known that minerals provide nutritional and health benefits, it would have been obvious to one of ordinary skill in the art to use the minerals in amounts, including those presently claimed, in order to produce beer with desired taste that also provides health and nutritional benefits to the consumer. It would also have been obvious to one of ordinary skill in the art to use other minerals, including cobalt and boron, in order to produce beer with these desired properties.

22. Since the common forms of these chemicals is the dry form, it is obvious to use the dry form as presently claimed. It is also obvious that calcium and magnesium compounds should be brought into solution if compounds are not water soluble as presently claimed. It is obvious that carbonated beverages are produced using carbon dioxide as presently claimed. The form of mineral supplements which can be used in human nutrition are also known in the art.

23. The solubility of the minerals in water and in the presence of other chemicals may necessitate the inclusion of acids and buffers as presently claimed. It would be obvious to those of skill in the art to include acids either organic or inorganic as well as buffers to sustain the solubility of the added minerals in the beer or beverage. It would also be obvious to use acids such as phosphoric acid both for dissolution of minerals

Art Unit: 1794

and for the organoleptic properties of this acid. Use of phosphoric acid in regular beverages is known in the art of beverages.

24. R1 and R2 are silent regarding the incorporation of lithium into the beverage.

25. R3 discloses incorporating lithium at 0.06-0.15 mg/L of mineral water (Abstract).

26. It is seen that R1 clearly gives the motivation for adding supplements including minerals to the beer with reduced alcohol (diluted beer). R2 also gives the details of the type and concentration of minerals which can be added to drinks including beer and wine, therefore it would be obvious to those of skill in the art to dilute the beer and incorporate the minerals as taught by R1 and R2 and R3. One would do so to compensate for the effects that dilution of a drink such as beer may have on the taste and mouthfeel. Absent any evidence to contrary and based on the combined teachings of the cited references, there would be a reasonable expectation of success in creating a diluted beer containing minerals.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAMID R. BADR whose telephone number is (571)270-3455. The examiner can normally be reached on M-T 5:30 to 4:30 (Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hamid R Badr
Examiner
Art Unit 1794

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1794